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**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

TED SOUZA; FRIENDS OF THE DEL )  
NORTE; ENVIRONMENTAL )  
PROTECTION INFORMATION )  
CENTER, a non-profit corporation; and )  
CENTER FOR BIOLOGICAL )  
DIVERSITY, a non-profit corporation, )  
  
Plaintiffs, )  
  
v. )  
  
CALIFORNIA DEPARTMENT OF )  
TRANSPORTATION; MALCOM )  
DOUGHTERY, in his official capacity as )  
Director of the State of California )  
Department of Transportation; the )  
NATIONAL MARINE FISHERIES )  
SERVICE; and EILEEN SOBECK,<sup>1</sup> in )  
her official capacity as Assistant )  
Administrator for Fisheries, )  
  
Defendants. )

CASE NO. 3:13-cv-4407-JD

**STIPULATION AND ~~PROPOSED~~  
ORDER AS TO ATTORNEYS' FEES AND  
COSTS**

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<sup>1</sup> Eileen Sobeck has been automatically substituted for Samuel D. Rauch pursuant to Federal Rule of Civil Procedure 25(d).

1 WHEREAS, Plaintiffs, an individual and non-profit public interest organizations, filed an  
2 action on September 23, 2013, against the California Department of Transportation (“CalTrans”)  
3 and Malcolm Dougherty, in his official capacity as Director of CalTrans (collectively, the “State  
4 Defendants”); and against the National Marine Fisheries Service (“NMFS”), and Eileen Sobeck,  
5 in her official capacity as NMFS Assistant Administrator for Fisheries (collectively, the “Federal  
6 Defendants”), concerning a project proposed by CalTrans to modify U.S. Route 199 and State  
7 Route 197 at seven sites in Del Norte County, CA, along the Smith River (the “Proposed  
8 Project”), *see* Dkt. 1.;

11 WHEREAS, Plaintiffs’ Complaint asserts that the Plaintiffs filed this action in pursuit of  
12 their public interest objectives;

13 WHEREAS, Plaintiffs’ Complaint asserted seven causes of action, all under the  
14 Administrative Procedure Act: (1) failure to adequately engage in Endangered Species Act  
15 (“ESA”) consultation (against NMFS); (2) failure to adequately engage in consultation under §  
16 305 of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) (against all  
17 Defendants); (3) failure to adequately engage in Wild and Scenic Rivers Act consultation  
18 (against the State Defendants); (4) failure to prepare an Environmental Impact Statement  
19 pursuant to the National Environmental Policy Act (“NEPA”) (against the State Defendants); (5)  
20 failure to prepare an adequate Environmental Assessment pursuant to NEPA (against the State  
21 Defendants); (6) failure to comply with the Department of Transportation Act as required by  
22 NEPA (against the State Defendants); and (7) failure to comply with NEPA, the ESA, the MSA,  
23 the Wild and Scenic Rivers Act, and the Department of Transportation Act (against all  
24 Defendants);

27 WHEREAS, Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2014;  
28

1 WHEREAS, the Court granted Plaintiffs' Motion for Preliminary Injunction on May 2,  
2 2014 (the "PI Order");

3 WHEREAS, in response to the PI Order, on May 22, 2014, CalTrans agreed to request  
4 reinitiation of consultation with NMFS under Section 7 of the ESA concerning the Proposed  
5 Project's potential impact on coho salmon threatened with extinction and their critical habitat  
6 and consultation with NMFS concerning the Proposed Project's impact on Pacific salmon  
7 essential fish habitat under the MSA;

8  
9 WHEREAS, following a conference with the Court, the parties entered into a stipulated  
10 order that *inter alia* provided for the injunction to remain in place and dismissed Plaintiffs'  
11 claims without prejudice and subject to a tolling agreement, and the stipulated order was entered  
12 by the Court on July 9, 2014, *see* DKT. 97 (the "Stipulated Order");

13  
14 WHEREAS, Plaintiffs' Complaint and other filings asserted that they filed this action for  
15 the purpose of advancing the public interest in requiring CalTrans and NMFS to meet their  
16 obligations under federal law to adequately assess the Proposed Project's environmental impacts,  
17 including, without limitation, its impacts on the salmonids of the Smith River;

18  
19 WHEREAS, Federal Defendants Answer and other filings asserted that they were and  
20 remain in compliance with all applicable laws and regulations concerning the Proposed Project;

21  
22 WHEREAS, on September 26, 2014, Plaintiffs filed a Motion for an Award of Attorneys'  
23 Fees and Reimbursement of Costs Under the Equal Access to Justice Act ("Plaintiffs' Motion for  
24 Fees and Costs");

25  
26 WHEREAS, Plaintiffs' Motion for Fees and Costs included a proposed order seeking that  
27 the Court find State Defendants and Federal Defendants jointly and severally responsible for the  
28 payment of Plaintiffs' claim for attorneys' fees and costs;

1 WHEREAS, Federal Defendants and Plaintiffs (collectively, the “Settlement Parties”),  
2 believe it is in the interests of judicial economy, the public interest, and the Settlement Parties’  
3 interests to avoid further litigating Plaintiffs’ Motion for Fees and Costs;  
4

5 WHEREAS, Plaintiffs represent that as a good faith effort to resolve Plaintiffs’ Motion  
6 for Fees and Costs, the law firm of COTCHETT, PITRE & McCARTHY, LLP has waived all of  
7 its attorneys’ fees incurred in this action through the date of this Stipulation and Order;

8 THEREFORE, the Settlement Parties hereby stipulate to the following, subject to Court  
9 approval:  
10

11 1. The Federal Defendants shall pay Plaintiffs the amount of \$130,000 in settlement  
12 of Plaintiffs’ claim for an award of litigation costs incurred in this action to date, including  
13 \$115,000 in attorneys’ fees, and \$15,000 in other litigation costs, pursuant to the Equal Access to  
14 Justice Act (“EAJA”), 28 U.S.C. § 2412 (the “Payment”).  
15

16 2. The Payment shall be made by the Federal Defendants via electronic funds  
17 transfer to Gross Law, P.C., in accordance with the payment information provided by Gross  
18 Law, P.C., for appropriate distribution.

19 3. The Federal Defendants shall submit all necessary paper work for the processing  
20 of the Payment to the appropriate office(s) within ten (10) business days following entry of this  
21 Order.  
22

23 4. Upon entry of this Order, the Federal Defendants shall be released of any and all  
24 claims for costs, including attorneys’ fees, incurred in this action through the date of this  
25 Stipulation and Order that Plaintiffs may have against any and all Federal Defendants. Plaintiffs  
26 reserve the right to seek additional fees and costs incurred subsequent to this Stipulation and  
27 Order. The Federal Defendants do not waive any right to contest any such fees claimed by  
28

1 Plaintiffs or Plaintiffs' counsel, including the hourly rate, with the sole exception that Federal  
2 Defendants shall not argue that any such claims for fees is released by virtue of this Stipulation  
3 and Order.

4  
5 5. Within ten ( 10) business days after entry of this Order, Plaintiffs shall dismiss  
6 Plaintiffs' Motion for Fees and Costs with prejudice with respect to the claims for attorneys' fees  
7 and costs against Federal Defendants and withdraw the Proposed Order (ECF No. 98-1) filed on  
8 September 26, 2014.

9  
10 6. Upon entry of this Order, the Federal Defendants cannot and will not be held  
11 jointly and severally liable for any remaining claims against the State Defendants for attorneys'  
12 fees and costs incurred in this case, through and including the date of this Stipulation and Order.

13 7. No provision in this Stipulation and Order shall be interpreted as or constitute a  
14 commitment or requirement that the Federal Defendants obligate or pay funds in violation of the  
15 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

16  
17 8. The Court shall retain jurisdiction to enforce and oversee compliance with the  
18 terms and conditions of this Stipulation and Order.

19 9. This Stipulation does not constitute an admission by any party to any fact, claim,  
20 assertion of violation of any statute or regulation, or defense in this lawsuit, including without  
21 limitation any claim to entitlement to attorneys' fees and costs, as well as any defense thereto.  
22 Accordingly, the Settlement Parties agree that this Stipulation has no precedential value as to  
23 attorneys' fees and costs and shall not be used as evidence in any other attorneys' fees litigation  
24 against any agency or officer of the Federal Government.

25  
26 10. The Settlement Parties, by their duly authorized representatives, agree to this  
27 Stipulation.  
28

1           11.     The provisions of this Stipulation shall apply to and be binding upon the  
2 Settlement Parties including, but not limited to, their officers, directors, servants, employees,  
3 successors, and assigns.

4           12.     This Stipulation constitutes the entire agreement of the Settlement Parties  
5 concerning the rights and obligations discussed herein. No other agreement shall govern the  
6 rights of the Settlement Parties with respect to the matters resolved by this Stipulation, except in  
7 accordance with the terms herein.  
8

9  
10 Dated: April 14, 2015  
11

12                               Respectfully Submitted,

13                               JOHN CRUDEN,  
14                               Assistant Attorney General  
15                               SETH M. BARSKY, Chief  
16                               S. JAY GOVINDAN,  
                                  Assistant Chief

17                               /s/ Daniel Pollak  
18                               DANIEL POLLAK  
19                               Trial Attorney  
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24                               Attorneys for Federal Defendants

25  
26                               GROSS LAW

27                               /s/ Stuart G. Gross (with permission)  
28                               STUART G. GROSS (#251019)  
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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: April 20, 2015

